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ORIGINAL

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EX PARTE

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
The Portals
445 Twelfth Street, S.W.
Washington, DC 20554

Re: Advanced Telecommunications Proceeding (Dkt No. CC98-147)

Dear Ms. Salas,

Bell Atlantic responds briefly to those reply comments in the Advanced Services docket objecting to its request the Commission clarify that – as the 1996 Act expressly provides – the "interLATA service" covered by Section 271(a) includes only "telecommunications services," not "information services" such as Internet services.

Demand for all forms of advanced data services (including advanced information services) is growing, and the Commission has recently approved the formation of MCI WorldCom as a uniquely positioned advanced-data-services provider. MCI WorldCom describes itself in its advertising as the only company able to offer a fully-integrated bundle of Internet, data and voice services over a "wholly owned" and seamless global network. MCI WorldCom Advertisement, Wall St. J., Nov. 5, 1998m at B18-19. The introduction of new competition in Internet and other advanced information services thus is more urgent than ever, and the need for clarification is pressing.

Only one party – not surprisingly, one of the current Big Three in the Internet backbone business, Sprint (Reply Comments at 8-19) – makes a vigorous attempt to stop the Commission from recognizing the statutory limitation of the interLATA bar of Section 271(a) to "telecommunications services." Bell Atlantic has explained that, under the express statutory definitions, and the Commission's April 1998 Report to Congress, 13 F.C.C.R. 11501 (1998), the Section 271(a) bar on "interLATA service" originating in a BOC's region

does not extend to "information services" provided over another firm's transmission facilities. Sprint has provided no ground justifying either the Commission's refusal to consider the issue or its rejection of the clarification requested by Bell Atlantic. (See also Commercial Internet Exchange Ass'n Reply Comments at 9-12).

Sprint initially seeks to exclude the issue from this proceeding on the ground that Section 706 does not address information services. Sprint Reply Comments at 8-9. But that assertion not only takes an improperly cramped reading of Section 706's broad terms and aims, but it is irrelevant, because the present proceeding is not restricted to Section 706. The scope of the interLATA bar is an essential aspect of any consideration of what interLATA relief – by way of boundary modification or otherwise – is needed and justified to promote deployment of advanced services.

Sprint next incorrectly asserts that the Nonaccounting Safeguards Order, 11 F.C.C.R. 21905 (1996), ¶ 127, settles the issue. Sprint Reply Comments at 9, 11-12 & n. 14. But Sprint must, and in fact does, ignore entirely the Commission's most recent, and most thorough, analysis of the terms of the Act that determine the scope of the interLATA bar to make that assertion. The Commission's April 1998 Report to Congress made clearer than it previously had been that (1) "information services" and "telecommunications services" are non-overlapping categories, (2) Internet services are information services, not telecommunications services, and (3) whether another firm's transmission facilities are used (by any form of lease) is important to the analysis, with distinct additional difficulties arising when self-transmission was present. (See also NCTA Reply Comments at 10-11 (stressing distinction between telecommunications services and information services). It is in light of those clarifying determinations, and the express statutory limitation of "interLATA services" to "telecommunication services," that Bell Atlantic has sought the Commission's ruling on the meaning and limited scope of the Nonaccounting Safeguards Order.

Sprint's battle to prevent the issue from being considered betrays the weakness of its arguments on the merits. As a preliminary matter, Sprint relies on statutory arguments not in the Non-Accounting Safeguards Order, even though it claims that Order settles the issue. But even these new arguments do not give it any aid. Thus, Sprint argues that Section 271(d)(3)(B)'s requirement that the Commission find an RBOC will comply with Section 272 before granting relief under Section 271 somehow implies that Section 271 reaches information services, but that is not plausible. After all, Section 272 applies to "telecommunications services," so it is natural for Section 271 to require compliance with Section 272. Indeed, as Bell Atlantic noted in its initial comments, Section 272 itself distinguishes between telecommunications and information services, and only discusses Section 271 in the context of telecommunications services. NPRM Comments at 14.

Similarly, Sprint is wrong that the existence of Section 271(g) somehow proves that Section 271(a) covers information services. Section 271(g) is an express exclusion of certain telecommunications services "incidental to" various other services. H.R. Conf. Rep. No. 104-458, at 147 (1996). Under those exclusions, Bell Atlantic would be permitted to itself

offer underlying telecommunications incidental to a telecommunications or information service; but the issue here is whether Bell Atlantic could lease the telecommunications to provide an information service. NPRM Comments at 17-18. In this latter instance, it is using telecommunications, not providing it.

Most importantly, nothing Sprint has said can overcome the unambiguous, explicit, deliberate definition of "interLATA services" in the 1996 Act to reach only "telecommunications services," thus excluding "information services" such as Internet services. 47 U.S.C. § 153(21). The flawed textual arguments do not. Nor does Sprint's stubborn refusal to recognize the extensive discussion in the April Report to Congress explaining the mutual exclusivity of "telecommunications services" and "information services." Nor does Sprint's reliance on pre-1996 Act interpretations of the differently worded MFJ. Nor, finally, does AT&T's pooh-poohing of the relevance of ownership of transmission facilities under what it says is now-irrelevant MFJ authority (AT&T Reply Comments at 97-98, n. 249): the Commission thought that fact critical in its Report to Congress and, indeed, has treated it as critical in pre-1996 Act policies. See Frame Relay Order; Computer II.

In short, nothing in the reply comments refutes the detailed showing in Bell Atlantic's opening comments that section 271 does not apply to "information services," and the Commission should so hold in its order in this proceeding.

Sincerely,

James G. Pachulski